

III. REMARKS

As discussed further below, Applicant respectfully requests reconsideration and withdrawal of the claim rejections.

Claim Rejection under 35 USC § 103

Claims 1, 5-8, 18 and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Estay in view of Jones et al..

Allowed and Allowable Subject Matter

Claims 9, 12-17, 20 and 21 were allowed in the Office Action. Claims 2, 3 and 22 were objected to as being dependent upon a rejected base claim, but were indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Claim Rejections

Applicant again thanks the Examiner for indication of allowance and allowability of the above-noted claims.

With regard to rejection of claims 1, 5-8, 18 and 19, Applicant respectfully requests reconsideration and withdrawal of these rejections.

Jones is cited in the office action "to teach a cup support having a bendable extension member, but the specific structure of this member (e.g., its rectangular cross-section or V-shaped grooves), would not be necessary when modifying the Estay holder especially when the modified Estay holder would be formed of a constant diameter wire-like material (similar to that shown in the Estay patent) that would also be bendable per the teachings of the Jones et al. patent." (page 3, lines 11-16.)

However, Applicant disagrees with this interpretation of the teachings of the Jones patent. Jones shows a holder of a polymeric material with integrally formed hinges established by aligned, "oppositely disposed substantially V-shaped grooves" (see e.g., col. 10, lines 1-18). These grooves in the second embodiment of Jones, as well as the score lines in the first embodiment, are repeatedly characterized as functioning "as a hinge" or providing a "hinge-like function" for selective movement of one part relative to another part.

In contrast, the holder of the present invention as recited in the rejected claims comprises a bendable wire structure with a substantially constant material thickness, which structure has been further clarified as continuously bendable.

And Applicant submits that there is a distinguishable difference between a bendable structure and a hinged structure. A bendable structure can be straight, or curved, and while a bendable structure may connect two components, it can be shaped to achieve a convenient curvature within itself, or for convenient displacement along the length thereof. A hinge, on the other hand, is a joint between two components. A hinge permits swinging or pivoting of one part in relation to the other, but only at the location of the joint. To consider a hinged-structure is to view movement of one part relative to a second part about the "hinge". To consider a bendable structure is to view a structure that can be shaped along the bendable length thereof. A single part or component can be viewed as bendable, but to achieve a "hinge-like function" requires two parts or components. Bendable parts and hinged parts are generally not synonymous. A door is hinged to a wall, but this does not make the door or wall or combination bendable. A cover can be hinged to a box, but teaching a box with a hinged lid does not teach a bendable box or lid or combination. A handle can be hinged to a base structure, but such does not teach a continuously bendable handle.

Therefore, Applicant believes that the Jones et al. patent, properly interpreted, teaches a holder with discrete sections that are hinged together for relative pivoting at the hinges, and as combined with Estay, would result in the Estay device provided with and integrally formed hinge or hinge-like structure.

Accordingly, Applicant believes that the holder as recited in the rejected claims, comprising a continuously bendable wire structure having a substantially constant material thickness, patentably distinguishes over the cited references.

For the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the claim rejections, and allowance of all claims pending in the application.

Respectfully submitted,


Keith Frantz, Reg. No. 37828
401 West State Street, Suite 200
Rockford, Illinois 61101
(815) 987-9820
(815) 987-9869 [fax]